

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

BOILERMAKER-BLACKSMITH NATIONAL)
PENSION TRUST; BOILERMAKERS NATIONAL)
HEALTH AND WELFARE FUND;)
BOILERMAKERS NATIONAL ANNUITY)
TRUST; BOILERMAKERS' APPRENTICESHIP)
AND TRAINING FUNDS; JOHN FULTZ as a)
fiduciary of the BOILERMAKER-BLACKSMITH)
NATIONAL PENSION TRUST, BOILERMAKERS)
NATIONAL HEALTH AND WELFARE FUND,)
BOILERMAKERS NATIONAL ANNUITY)
TRUST and BOILERMAKERS')
APPRENTICESHIP AND TRAINING FUNDS;)
THE MOBILIZATION, OPTIMIZATION,)
STABILIZATION AND TRAINING FUND; and)
DALE BRANSCUM, II as a fiduciary of THE)
MOBILIZATION, OPTIMIZATION,)
STABILIZATION AND TRAINING FUND,)
)
Plaintiffs,)
vs.)
)
THE SMEDLEY COMPANY,)
)
)
Defendant.)

Case No. 5:20-cv-6016

COMPLAINT

Plaintiffs, for their cause of action against Defendant, The Smedley Company, state as follows:

NATURE OF THE CASE

2. This is an action brought pursuant to §§ 502 and 515 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1132 and 1145 to collect fringe benefit contributions from the Defendant as may be due and owing to the Plaintiff Employee Benefit Plans.

PARTIES

3. Plaintiff Boilermaker-Blacksmith National Pension Trust (hereinafter “the Pension Fund”) is an “employee benefit plan” within the meaning of 29 U.S.C. § 1002(3). The Pension Fund is a legal entity that may sue or be sued, pursuant to 29 U.S.C. § 1132(d). The Pension Fund maintains its principal place of administration at 12200 NW Ambassador Drive, Kansas City, Missouri 64163, which is located within the territorial boundaries of the Western District of Missouri. The Pension Fund is a “multi-employer plan” within the meaning of 29 U.S.C. § 1002(37) and has been established pursuant to § 302(c)(5) of the Labor Management Relations Act (LMRA), 29 U.S.C. § 186(c)(5).

4. Plaintiff Boilermakers National Health and Welfare Fund (hereinafter “the Health & Welfare Fund”) is an “employee benefit plan” within the meaning of 29 U.S.C. § 1002(3). The Health & Welfare Fund is a legal entity that may sue or be sued, pursuant to 29 U.S.C. § 1132(d). The Health & Welfare Fund maintains its principal place of administration at 12200 NW Ambassador Drive, Kansas City, Missouri 64163, which is located within the territorial boundaries of the Western District of Missouri. The Health & Welfare Fund is a “multi-employer plan” within the meaning of 29 U.S.C. § 1002(37) and has been established pursuant to § 302(c)(5) of the LMRA, 29 U.S.C. § 186(c)(5).

5. Plaintiff Boilermakers National Annuity Trust (hereinafter “the Annuity Fund”) is an “employee benefit plan” within the meaning of 29 U.S.C. § 1002(3). The Annuity Fund is a legal entity that may sue or be sued, pursuant to 29 U.S.C. § 1132(d). The Annuity Fund maintains its principal place of administration at 12200 NW Ambassador Drive, Kansas City, Missouri 64163, which is located within the territorial boundaries of the Western District of

Missouri. The Annuity Fund is a “multi-employer plan” within the meaning of 29 U.S.C. § 1002(37) and has been established pursuant to § 302(c)(5) of the LMRA, 29 U.S.C. § 186(c)(5).

6. Plaintiff Boilermakers’ Apprenticeship and Training Funds (hereinafter “the Apprenticeship Funds”) are “employee benefit plans” within the meaning of 29 U.S.C. § 1002(3). The Apprenticeship Funds are legal entities that may sue or be sued, pursuant to 29 U.S.C. § 1132(d). The Apprenticeship Funds maintain their principal place of administration at 12200 NW Ambassador Drive, Kansas City, Missouri 64163, which is located within the territorial boundaries of the Western District of Missouri. The Apprenticeship Funds are “multi-employer plans” within the meaning of 29 U.S.C. § 1002(37) and have been established pursuant to § 302(c)(5) and (6) of the LMRA, 29 U.S.C. § 186(c)(5) and (6).

7. Plaintiff John Fultz is a fiduciary of the Plaintiffs Pension Fund, Health & Welfare Fund, Annuity Fund, and Apprenticeship Funds within the meaning of 29 U.S.C. § 1002(21), and as such, is a proper party to this action.

8. Plaintiff Mobilization, Optimization, Stabilization and Training Fund (hereinafter “the MOST Fund”) is an employee benefit plan within the meaning of 29 U.S.C. § 1002(3). The MOST Fund maintains its principal place of administration at 12200 NW Ambassador Drive, Kansas City, Missouri 64163, which is located within the territorial boundaries of the Western District of Missouri. The MOST Fund is a legal entity that may sue or be sued, pursuant to 29 U.S.C. § 1132(d). Additionally, the MOST Fund is a “multi-employer plan” within the meaning of 29 U.S.C. § 1002(37) and has been established pursuant to § 302(c) of the Labor Management Relations Act (LMRA), 29 U.S.C. § 186(c).

9. Plaintiff Dale Branscum, II is a fiduciary of the MOST Fund within the meaning of 29 U.S.C. § 1002(21), and as such, is a proper party to this action.

10. Defendant, The Smedley Company (hereinafter “Smedley”) is a corporation organized under and existing by virtue of the laws of the State of Connecticut. Smedley is an employer within the meaning of 29 U.S.C. § 1002(5).

JURISDICTION

11. This Court has jurisdiction of Plaintiffs’ claims pursuant to 29 U.S.C. §§ 1132 and 1145, and also pursuant to 28 U.S.C. § 1331.

12. Whereas the Plaintiff employee benefit plans are administered in the Western District of Missouri, venue is appropriate in this district pursuant to 29 U.S.C. § 1132(e)(2).

CAUSE OF ACTION

13. At all times relevant hereto, Smedley has been a party to one or more collective bargaining agreements with the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO (hereinafter “Boilermakers International”) and/or affiliate local unions of the Boilermakers International (collectively, “the Union”).

14. Each of the Plaintiffs Pension Fund, Health & Welfare Fund, Annuity Fund, Apprenticeship Funds, and MOST Fund (hereinafter collectively “the Funds”) is established and operated pursuant to a written agreement and/or declaration of trust. These agreements and/or declarations of trust are incorporated by reference into and are a material part of the collective bargaining agreement(s) between Smedley and the Union.

15. Upon information and belief, at all times material and relevant to this action, Smedley has employed employees who have performed covered work under the collective bargaining agreement(s).

16. Smedley is obligated under the collective bargaining agreement(s) to timely submit reports and fringe benefit contributions to the Funds. Smedley is required to submit

contributions to the Funds each month in such amounts as determined by the number of hours of covered work performed by Smedley's employees at the rates established for each of the Funds in the collective bargaining agreement(s).

17. The collective bargaining agreement(s) require that contributions due to the Funds are to be paid by the fifteenth (15th) day of the month following the month in which the work was performed, and payments are delinquent if not received by that date.

18. Smedley failed to timely report the hours of covered work performed by its employees during June through November 2019, and has failed to remit payment of the contributions owing thereon to the Funds. As a result, Smedley is in breach of the collective bargaining agreement(s).

19. Smedley is liable to the Funds for delinquent contributions in the amount of thirty-four thousand, seven hundred and fifteen and 69/100 dollars (\$34,715.69) for the months of June through November 2019. As a result, Smedley is in breach of the collective bargaining agreement(s).

20. The collective bargaining agreement(s), the trust agreements, and ERISA provide remedies to the Funds in the event an employer fails to make required contributions. Among the remedies available are costs of collection, attorneys' fees, interest, and liquidated damages.

21. Pursuant to the collective bargaining agreement(s) and the trust agreements incorporated therein, Smedley is liable to the Funds for liquidated damages of twelve percent (12%) of delinquent contributions. Accordingly, Smedley is liable to the Funds for liquidated damages in the amount of four thousand, one hundred and sixty-five and 88/100 dollars (\$4,165.88) upon the delinquent contributions for the hours of covered work performed during June through November 2019.

22. Pursuant to the collective bargaining agreement(s) and the trust agreements incorporated therein, Smedley is liable to the Funds for interest at the rate of twelve percent (12%) *per annum* upon the delinquent contributions and the liquidated damages. Accordingly, as of January 10, 2020, Smedley is liable to the Funds for accrued interest in the amount of one thousand, two hundred and ninety-five and 68/100 dollars (\$1,295.68) upon the delinquent contributions for the hours of covered work performed during June through November 2019, and liquidated damages thereon. Interest continues to accrue.

23. The Funds have incurred attorneys' fees and other costs in their efforts to remedy Smedley's failure to pay fringe benefit contributions. The Funds are entitled to recover these fees and costs pursuant to the terms of the collective bargaining agreement(s) and by law.

WHEREFORE, Plaintiffs pray that the Court enter an Order:

a) Finding that Smedley is liable to the Plaintiff Funds in the amount of forty thousand, one hundred and seventy-seven and 25/100 dollars (\$40,177.25) (contributions - \$34,715.69; liquidated damages - \$4,165.88, and interest accrued through January 10, 2020 - \$1,295.68) and entering judgment against Smedley and in favor of the Plaintiffs for these amounts, plus interest that accrues from January 10, 2020 through the date judgment is entered;

b) Awarding the Plaintiffs their costs of this action, including Plaintiffs' reasonable attorney's fees; and

c) Granting the Plaintiffs such other relief that the Court deems just and proper, including interest that accrues during the pending of this action.

Respectfully submitted,

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